LIMITATIONS UPON THE POWER OF ONE STATE TO EXCLUDE THE CORPORATIONS OF ANOTHER. *Eugene F. Ware.* 17 Green Bag 699. See NOTES, p. 291.

OBLIGATION OF CONTRACT IN ITS RELATION TO THE U. S. CONSTITUTION. *Theodore F. C. Demarest.* Discussing U. S. Const., Art. I. sec. 10, as a ground for the decision in Muhler *v.* New York, etc., R. R. Co., 197 U. S. 544. 67 Alb. L. J. 315.

PACIFIC ISLAND LABORERS ACT, 1901 (No. 16 of 1901). *B. A. Ross.* Questioning the right of a country to deport laborers. 3 Commonwealth L. Rev. 3.

POSITION OF A TRUSTEE IN BANKRUPTCY WITH REFERENCE TO INVALID TRANSFERS OR LIENS, THE. *Ellicott D. Curtis.* 5 Columbia L. Rev. 584.

REMARKS UPON CHARGING THE JURY IN A TRIAL FOR MURDER, SOME. *Robert Ralston.* Read before Pennsylvania Bar Association, 1905. 53 Am. L. Reg. 658.

STATUTE OF USES AND THE MODERN DEED, THE. *John R. Rood.* 4 Mich. L. Rev. 109.

STATUTES REGULATING MEDICAL PRACTICE. *Lewis Hochheimer.* Collecting the cases that discuss what constitutes the practice of medicine. 61 Cent. L. J. 424.

WAR, ARBITRATION, AND PEACE. *W. P. Rogers.* Advocating international arbitration. 4 Mich. L. Rev. 91.

WAR IN THE ORIENT IN THE LIGHT OF INTERNATIONAL LAW, THE. *Theodore J. Grayson.* Discussing various novel questions in international law brought up by the recent war. 53 Am. L. Reg. 672.

II. BOOK REVIEWS.

THE LAW OF CONTRACTS. By William Herbert Page. In three volumes. Cincinnati: The W. H. Anderson Company. 1905. pp. cccclxv, 1–848; 851–1930; 1933–3083. 8vo.

This work is a disappointment. It is of value, but it falls far short of what it might have been It is neither a first-class digest nor a first-class treatise. Neither does it satisfactorily collect the cases under appropriate sections, nor does it discuss principles so as to throw real light on the matter in hand. Of historical investigation it shows little or none. It is simply another bulky treatise which deals with its subject in an uncritical way, retaining many old fallacies and, it is to be feared, giving succor to more than one that is new. On the other hand it must be given credit for rejecting many common errors and for having cited, though often without careful discrimination, most of the recent cases on the subject. It is only proper that these criticisms should be supported by some reference to the work itself.

In § 274 the common definition of consideration as "a benefit to the promisor, or a detriment to the promisee" is adopted. While this definition persists in the books, it is certain that the number of cases in which a benefit to the promisor has been *held* sufficient are few indeed. Of those that Professor Page cites, not one is a decision in point. Referred to in one of the cases cited by him, however, is a decision (Burruss *v.* Smith, 75 Ga. 710) which might be thought to be in point. But why was not Scotson *v.* Pegg (6 H. & N. 295) included among the references? It is a leading case. The court go expressly upon the notion that a benefit is sufficient and it is only by adopting their argument that the case can be made to square with the ordinary statement that doing or promising what you are already bound to do is not a consideration. And other cases similar to Scotson *v.* Pegg could have been added. Williston, Cases on Contracts, I, 248. Professor Langdell (Summary of Contracts, § 64) long since pointed out that benefit to the promisor, while necessary to create a common-law debt, is neither necessary nor sufficient to make a promise binding. Indeed, to create a debt a detriment also is required, so that even there benefit though necessary is not a sufficient consideration. Most writers on contracts have agreed with Professor Langdell. Pollock, 6th ed., 164; Anson, Huffcut's ed., 88; Harriman, 1st ed., 56–7; Ames, 2 HARV. L. REV. 1; Williston, 8 *ibid.* 33; Holmes, Com. Law, 290. Every case, and they are numerous in America (Williston, Cases on Contracts, I, 252, note), holding that a promise

to a *new* party to do what you are already bound to do is not a consideration is an authority against Professor Page's statement. One is constrained to think that he has not familiarized himself with either the best discussions of the matter or with the cases really bearing on it.

In § 276 it is stated that a consideration *from A* will support a promise *to B*. This must be considered an open question on the authorities. But only one or two of Mr. Page's citations bear on the question. Some of them are cases permitting beneficiaries to sue. These might have been multiplied almost indefinitely. That they have nothing to do with the question was clearly pointed out by Professor Williston in 15 HARV. L. REV. 771. Indeed, Professor Page recognizes this himself, Vol. I, p. 408. Professor Williston, at the place just cited, collects other cases bearing upon the question. These, one excepted, are not noted in the present work. The cases cited on page 409 as *contra*, with the exception of Thomas *v.* Thomas (2 Q. B. 851), have no bearing on the present question.

In § 578 we find the statement that "a written contract which is not required by law to be proved by writing, or to be in writing, is of no effect unless it is delivered, unless there is a valid oral contract between the parties, intended by the parties to be effective before delivery." What does this mean? Probably simply that the oral contract is valid. Do all written contracts then require delivery? This is not usually stated as one of the requisites of a simple contract. Of the cases cited by Mr. Page it may be said that in two of them the parties evidently made delivery a condition precedent to the contract taking effect, one was the case of a note and mortgage obviously distinguishable, one held that preliminary negotiations were merged in a written contract, and the other was at most but the uncommunicated offer of a note or due-bill in satisfaction of a precedent debt. In Professor Lawson's article on Contracts in 9 Cyc. 302, one will find several more cases stating that delivery is necessary. But on examination it appears that these statements were not required for the decisions and that they were made without any real consideration of the question. There is one sort of case that tests the matter. Suppose the parties to have put their agreement into writing and to have intended it to take effect as a contract, but that there has been no delivery. Would it be decided that there was no contract? The writer has not seen a case so holding. But Brogden *v.* Metropolitan Ry. Co. (2 App. Cas. 666) and Amer. Pub. Co. *v.* Walker (87 Mo. App. 503) seem to require the contrary view. See also Mildren *v.* Steel Co., 90 Pa. St. 317. It should be added that memoranda to satisfy the Statute of Frauds do not require delivery. 29 A. & E. Ency. Law 855-6; Clark, Contracts, 2d ed., 91.

If space permitted, much more evidence of a similar character could be produced. One is surprised to find Xenos *v.* Wickham cited (p. 64) for the view that a sealed *offer* is irrevocable. McMillan *v.* Ames (33 Minn. 257), the only other authority cited on the point, is also a case of a covenant, not an offer. In § 1256 we are told that, when the assignee was permitted to sue at law in the assignor's name, the rule that choses in action could not be assigned at law degenerated into a mere rule of pleading. This seems misleading. The truth is that the assignee's substantive rights remained the same as before. The change was merely one as to the forum in which they were to be enforced. Now he could sue at law in his assignor's name instead of seeking a court of equity. But his right was still an equitable one for all other purposes. For example, if the debtor paid the assignor without notice of the assignment he was still protected. That could not be if by the change the assignment became effective to pass the legal title to the chose. Then the assignee would be in the position of the transferee of a negotiable instrument. Payment to a prior holder would not affect him. In § 1258 we are told that now choses in action may be assigned as well at common law as in equity and that this is largely due to statute. The statutes Professor Page refers to merely permit the assignee to sue in his own name. They do not change his substantial rights. Do they make choses in action assignable at law? Not at all. They simply affect a rule of procedure. Finally the whole discussion of beneficiaries is

surely capable of improvement in the light of Professor Williston's article in 15 HARV. L. REV. 767.

On the other hand, as has already been said, many common errors are avoided. The usual statement that a seal creates a presumption of consideration is properly discarded (§ 561). Contracts implied in fact are distinguished from quasi-contracts (§ 771). The difference between failure of consideration, in the sense of breach by the plaintiff, and lack of consideration is clearly indicated (§ 274). Mistake as to parties or terms of the contract which may prevent its creation, and mistake as to other matters which at most may render it voidable, are well discriminated (§ 60). These instances might be multiplied. Many matters are capitally explained. The adding of duplicate citations to unofficial reports is commendable. No doubt the work will prove useful. C. B. W.

JURISDICTION AND PROCEDURE OF THE SUPREME COURT OF THE UNITED STATES. By Hannis Taylor. Rochester: The Lawyer's Co-operative Publishing Company. 1905. pp. lxvi, 1007. 8vo.

The publication of a text-book of over a thousand pages, dealing solely with the jurisdiction and procedure of the United States Supreme Court, marks an epoch in the literature on this subject. Practice in the Supreme Court has been dealt with at some length in a volume by Heber J. May, Esq., published by John Byrne and Company in 1899; but this volume was more like a volume of annotated court rules than a well-rounded treatise. Aside from Mr. May's book, the text-book sources to which the practising lawyer had to go for light on the subject were the chapters in books on the general subject of Federal Procedure. There was therefore a distinct call for the present work.

Professor Taylor seems to have met this call with great success. He does not content himself, as do so many text-book writers of the day, with a mere statement of head-notes or extracts from opinions — although there are many passages, some of them quite long, from the opinions of the court. Such extracts, however, and the brief digests of cases are admirably handled and so well blended with the comments of the author that, were it not for quotation marks, it would often be difficult to distinguish between the two. Nor does the author confine himself to a statement of the exact extent of the present jurisdiction and the method of procedure. He has followed the course which so distinguished Professor Thayer's methods — that of treating the entire subject from an historical and philosophical point of view. The subject is, of course, one especially adapted to such treatment.

The plan of the book is well arranged. In a preliminary chapter which, although entitled "Preface," contains much in excess of the usual prefatory remarks, there is "an outline of leading cases from the organization of the court to the present time," which illustrates in an interesting fashion not merely the development of the jurisdiction of the court, but its treatment of the various subjects of law which have come before it. The chief changes in the personnel of the court are also here noted. In an introductory chapter the origin and development of the court is treated at some length. There is an admirable disquisition upon the unique place occupied by the Supreme Court and the causes which brought it into its present position, wherein the scientific treatment of his subject by the author is especially noticeable. The chapter contains brief statements with regard to the effect upon the course of the court caused by the changes in the justices sitting.

The body of the work is divided into six main heads. Part I deals with the original jurisdiction of the court; Parts II, III, and IV deal with the appellate jurisdiction of the court over, respectively, the ordinary federal courts, the special federal courts, and the state courts; Part V discusses "The Great Writs," and Part VI deals with procedure. In two appendices are the rules of the Supreme Court and a collection of practical forms. Then follows an index and a table of cases cited, which shows a collection of some three thousand decisions.